

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

JOHN DOSCH, et al.,

Plaintiffs,

v.

ITS LOGISTICS, LLC, et al.,

Defendants/Cross-claimants.

Case No. 1:22-cv-01443-KES-CDB

FINDINGS AND RECOMMENDATIONS TO  
APPROVE MINOR'S COMPROMISE AND  
TO DIRECT CLERK OF THE COURT TO  
CLOSE THIS CASE

(Docs. 46, 48)

Plaintiffs John Dosch, Daniela Costantini-Dosch, C.D. (a minor), and I.D. (a minor) initiated this action in state court with the filing of a complaint on July 28, 2022, against Defendants ITS Logistics, LLC, Haul King Transport LLC, William Eugene Thomas, and ITS National, LLC ("ITS National"). (Doc. 1). ITS National removed the action to this Court on November 8, 2022. *Id.* Plaintiffs' claims relate to personal injuries sustained on account of a traffic collision involving Defendants.

On March 26, 2024, Plaintiffs filed a notice of settlement representing that all claims among the parties are resolved. (Doc. 43). The following day, the Court ordered Plaintiffs to file a copy of the state court order and all supporting and opposing documents filed in connection with the state petition for minor's compromise. (Doc. 44) (citing Local Rule 202(b)(1)).

On April 26, 2024, Plaintiffs filed a status report attaching various documents pertinent to the state court proceedings on the petition for minor's compromise. (Doc. 48). Having considered the petition, the terms of the settlement, and the record of this matter, the undersigned

recommends that the petition for minor's compromise be approved.<sup>1</sup>

## **I. Factual Background**

Plaintiffs' complaint asserts claims for property damage and personal injury sustained after a tractor trailer owned by Haul King Transport, LLC and ITS Logistics, LLC, which was driven by William Eugene Thomas in the course and scope of his employment with those Defendants. The complaint alleges that Mr. Thomas negligently drove the tractor trailer into Plaintiffs' vehicle, causing them significant physical and emotional injuries. (Doc. 1-1 p. 15).<sup>2</sup> On July 28, 2022, the state court approved the appointment of Therese Anderson as the guardian ad litem for both I.D. and C.D. (Doc. 1-1 pp. 6, 8).

On April 9, 2024, the state court approved Plaintiffs' petition for minor's compromise as it pertains to both C.D. and I.D. C.D.'s minor's compromise included a gross settlement amount of \$3,225,000. (Doc. 48-1 p. 2). In addition, the state court approved the payment of attorney's fees in the amount of \$1,193,250, and \$238,775.28 in costs. *Id.* The court approved C.D.'s receipt of \$1,792,974.92 through a structured settlement annuity. *Id.* at 3. As for I.D., the petition included a gross settlement amount of \$2,150,000.00; attorney's fees for \$795,500.00; and \$43,302.18 in costs. Following those deductions, I.D. will recover \$ 1,311,197.82 through a structured settlement annuity. (Doc. 48-2 pp. 1-4).

## **II. Legal Standard**

No settlement or compromise of "a claim by or against a minor or incompetent person" is effective unless it is approved by the Court. Local Rule 202(b). District courts have a special duty to safeguard the interests of litigants who are minors. Federal Rule of Civil Procedure 17(c); *Robidoux v. Rosengren*, 638 F.3d 1177, 1181 (9th Cir. 2011). "The purpose of requiring the court's approval is to provide an additional level of oversight to ensure that the child's interests

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<sup>1</sup> The Court notes that the parties have not filed a stand-alone petition for minor's compromise and rely entirely on the fully executed agreement and related pleadings in the parallel state court proceeding. As such, the undersigned construes Plaintiff's status report with attached state court pleadings as a petition for minor's compromise. (Doc. 48).

<sup>2</sup> The Court refers herein to the pagination identified in the CM/ECF header of Docs. 1-1 and 48-3.

are protected”. *K.M. v. Tehachapi School District*, No. 1:17-cv-01431-LJO-JLT, 2019 WL 991048, at \*4 (E.D. Cal. Feb. 28, 2019). Among other things, a court reviewing a proposed minor’s compromise must “determine whether the *net amount* distributed to each minor plaintiff in the proposed settlement is fair and reasonable.” *Robidoux*, 638 F.3d at 1179 (emphasis in original).

Under Local Rule 202(b)(1), unless the United States courts have exclusive jurisdiction:

the settlement or compromise shall first be approved by the state court having jurisdiction over the personal representative. Following such approval, a copy of the order and all supporting and opposing documents filed in connection therewith shall be filed in the District Court with a copy to all parties and to the Judge or Magistrate Judge who may either approve the settlement or compromise without hearing or calendar the matter for hearing.

Local Rule 202(b)(1).

### **III. Discussion**

The Court notes that the settlement agreement is unopposed and has been approved by the Honorable Judge Jared D. Moses of the Superior Court of California, County of Los Angeles. (Docs. 48-1, 48-2). The state court approved an attorney’s fees award in the amount of \$1,193,250.00 in connection with C.D.’s petition for minor’s compromise and a fee award for \$795,500.00 in connection with I.D.’s petition. These amounts correspond to a 37% attorney’s fee award for each of the minors. *See* (Doc. 48-3 p. 58).

In the state court action, counsel for Plaintiffs filed a declaration in support of the 37% contingency award that satisfies the requirements under Local Rule 202(c). *Id.* at 65-70. Among other things, the declaration reflects that Plaintiffs sought counsel’s representation in July 2022 and counsel obtained consent from the guardian ad litem (who herself was a licensed attorney until retirement) for the 37% contingency fee. *Id.* at 68. Counsel for Plaintiffs’ declaration also details a series of settlement awards in personal injury actions where counsel’s law firm was awarded attorney fees of 40%. *Id.* at 69-70.

The Ninth Circuit holds that the fairness of a minor plaintiff’s recovery should be evaluated “without regard to the proportion of the total settlement value designated for . . .

plaintiffs' counsel." *Robidoux*, 638 F.3d at 1182 (9th Cir. 2011). In the Eastern District of California, 25% of the recovery generally is accepted as the benchmark for attorney's fees in contingency cases involving minors. *See Chance v. Prudential Ins. Co. of Am.*, No. 1:15-cv-01889-DAD-JLT, 2016 WL 3538345, at \*3 (E.D. Cal. June 29, 2016) (compiling cases). However, "it may be error ... to reject the settlement simply because the court finds that the attorney fees sought are excessive." *S.G.P. v. Tehachapi Unified School District*, No. 1:22-cv-01066-ADA-BAK, 2022 WL 4450750, at \*9 (E.D. Cal. Sept. 23, 2022); *Velez v. Bakken*, No. 2:17-cv-960 WBS KJN, 2019 WL 358703, at \*2 n.4 (E.D. Cal. Jan. 29, 2019) ("It would be error for this court to reduce the attorney's fees simply because the court believed 46% of the total settlement was excessive."). Here, the Court finds that departure from the 25% benchmark is warranted for the reasons that follow.

First, the Court perceives some unwarranted unfairness and incongruity to cap counsel for Plaintiffs to the 25% benchmark when, in the underlying state action, a court already has considered and approved the 37% contingency fee rate. *See* (Doc. 48-3 pp. 66-70) (detailing counsel for Plaintiff's experience with complex personal injury cases related to catastrophic injuries, including wrongful death actions against trucking companies). Second, counsel for Plaintiffs have secured an exceptional award compared to other minor plaintiffs involved in non-fatal motor vehicle collisions. *See, e.g., Rivett v. U.S.*, No. 2:17-cv-00717-DAD-AC, 2023 WL 4238909, at \*2 (E.D. Cal. June 28, 2023) (approving recovery of \$32,559.99 for minor plaintiff involved in motor vehicle collision); *Collins v. United States*, No. 2:20-cv-02458-JAM-DMC, 2022 WL 3969552, at \*4 (E.D. Cal. Aug. 31, 2022) (approving recovery of \$1,500 for each of three minor plaintiffs exclusive of attorney fees and reimbursement to Medi-Cal for their associated liens for claims alleging that a park ranger caused a motor vehicle accident); *Sykes v. Shea*, No. 2:16-2851 WBS GGH, 2018 WL 2335774, at \*1 (E.D. Cal. May 23, 2018) (approving recovery of \$87,500 for the minor plaintiff in action involving personal injuries sustained following vehicle collision with a truck owned by the defendant).

In sum, the Court finds the proposed settlement amounts of \$1,792,974.72 for C.D. and \$1,311,197.82 for I.D. to be fair, reasonable, and in the best interests of the children when

1 compared to similar settlements cited by counsel for Plaintiffs and approved in other cases  
2 independently identified by the undersigned.

3 **IV. Findings and Recommendations**

4 Based upon the foregoing, the Court **RECOMMENDS** that the petition to approve  
5 settlement of the minors' compromise (Docs 46, 48) be **APPROVED IN FULL** and that,  
6 consistent with the parties' stipulation for dismissal with prejudice (Doc. 46), the Court  
7 acknowledge on the docket that this action shall be terminated by operation of law without order  
8 of the Court and direct the Clerk of the Court to close this case.

9 These findings and recommendations are submitted to the United States District Judge  
10 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1)(B) and Rule 304 of the  
11 Local Rules of Practice for the United States District Court, Eastern District of California. Within  
12 fourteen days after being served with these findings and recommendations, any party may file  
13 written objections with the Court and serve a copy on all parties. Such a document should be  
14 captioned "Objections to Magistrate Judge's Findings and Recommendations." The parties are  
15 advised that failure to file objections within the specified time may waive the right to appeal the  
16 district judge's order. *Martinez v. Ylst*, 951 F.2d 1153 (9th Cir. 1991).

17 IT IS SO ORDERED.

18 Dated: May 24, 2024

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UNITED STATES MAGISTRATE JUDGE